

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIM COMER, *et al.*,

Plaintiffs,

Case No. 1:04-CV-108

v.

HON. RICHARD ALAN ENSLEN

WALMART STORES, INC.,

Defendant.

ORDER

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This matter is before the Court on Defendant Walmart Stores, Inc.'s Motions for Reconsideration and to Permit Filing of a Supplemental Brief in Support of the Motion for Reconsideration.

Upon review, the Court finds it is proper to allow Defendant's supplemental filing for the purpose of amending its Motion for Reconsideration. Therefore, Defendant's Motion to permit filing of a Supplemental Brief will be granted.

Regarding Defendant's Motion for Reconsideration, Local Civil Rule 7.4(a) states that reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been misled...[and] that a different disposition of the case must result from correction thereof."

Since discovery taken in the related case of *Ramsey, et al. v. Walmart Stores, Inc.*, Case No. 1:02-CV-955 (W.D. Mich.) is applicable to this case, Defendant argues that discovery is complete. (See Order, *Comer*, Dkt. No. 102 at 2.) Therefore, Defendant asserts that the "stricter standard" should apply to the Court's determination of whether employee's are "similarly situated" under the Fair Labor Standards Act. (See Def.'s Br. at 2-5; see also 29 U.S.C. § 216(b); see also *Goldman v. Radioshack*

Corp., 2003 U.S. Dist. LEXIS 7611, *20-21 (E.D. Pa. Apr. 17, 2003); *Morisky v. Public Serv. Elec. & Gas Co.*, 111 F. Supp. 2d 493, 497-78 (D.N.J. 2000).)

Although discovery taken in *Ramsey* is applicable to this case, the discovery in this case is by no means near completion. The Case Management Order states that discovery “**regarding the collective action issue** shall be completed by **November 30, 2004.**” (Dkt. No. 18.) Therefore, discovery is complete as to the collective action issue **only**. The Case Management Order does not create a deadline for substantive discovery, which will be set at a Rule 16 Conference to follow. For those reasons, the Court finds that Defendant fails to meet the standard set forth by Local Civil Rule 7.4 and Defendant’s Motion will be denied.

THEREFORE, IT IS HEREBY ORDERED that Defendant’s Motion to Permit Filing of Supplemental Brief in Support of Motion for Reconsideration (Dkt. No. 178) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Walmart Stores, Inc.’s Motion for Reconsideration (Dkt. No. 172) is **DENIED**.

DATED in Kalamazoo, MI:
April 22, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE